

### **REMARKS**

Applicants acknowledge and thank the Examiner for indicating that claims 31, 37, 38 and 42 contain allowable subject matter and would be allowed if rewritten in independent form. However, for the following reasons, Applicants believe that allowance of the remaining claims is also warranted. Thus, in view of the foregoing amendments and following remarks, as well as the submission herewith of a Terminal Disclaimer over U.S. Application No. 11/664,165, reconsideration of the outstanding rejections and allowance of pending claims 29-42 are respectfully requested.

Claims 29-42 stand rejected under 35 U.S.C. §112, second paragraph. Specifically, it is asserted that the phrases “other physical changes” and “significant alternation to the mineralogy” in claims 29, 35 and 41 render these claims, as well as the claims depending therefrom, indefinite. Claims 29, 35 and 41 have been amended to delete the objectionable language which addresses the asserted 35 U.S.C. §112, second paragraph rejections. Accordingly, Applicants respectfully submit that this rejection should be reconsidered and withdrawn.

In addition, claims 29, 30, 32-36 and 39-41 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting over claims 23-25 and 28-42 of copending U.S. Application No. 11/664,165 in view of the Salsman et al. article and U.S. Patent No. 4,311,520 to Kruesi et al. Initially, Applicants note that U.S. Patent No. 4,311,520 has not been listed on a Form PTO/SB/08a or Notice of References Cited in this case. Applicants would appreciate inclusion of this patent on the appropriate form to ensure it is properly made of record and captured on the face of any issued patent.

Applicants further note that the subject application has a filing date preceding the filing date of the cited copending application and no prior art rejections under 35 U.S.C. §102 or §103 are currently pending on the subject application. Thus, the double patenting rejection should be withdrawn even without filing a Terminal Disclaimer since the obviousness-type double patenting rejection is the only rejection remaining in the subject application while U.S. Application No. 11/664,165 stands rejected on other grounds. M.P.E.P. §804 (I)(1).

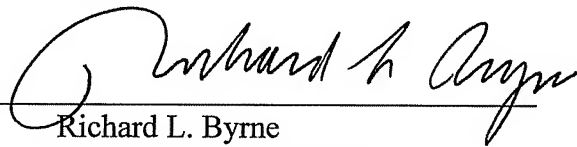
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In any event, to expedite prosecution, a Terminal Disclaimer is submitted with this response to terminally disclaim the terminal part of the statutory term of any patent granted on the present application that would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. §154 to 156 and 173 of any patent issuing from U.S. Application No. 11/664,165 subject to the conditions noted in the Terminal Disclaimer. The filing of the Terminal Disclaimer over U.S. Application No. 11/664,165 overcomes the basis for this rejection and, therefore, Applicants respectfully request that this rejection be reconsidered and withdrawn.

For the foregoing reasons, Applicants submit that the pending claims are patentable over the cited documents of record and are in condition for allowance. Accordingly, reconsideration of the outstanding rejections and allowance of pending claims 29-42 are respectfully requested.

Respectfully submitted,  
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By



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